

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 04-7959

WILLIAM FRANK TATE,

Petitioner - Appellant,

versus

WARDEN, McCormick Correctional Institution;
HENRY MCMASTER, Attorney General for South
Carolina,

Respondents - Appellees.

Appeal from the United States District Court for the District of
South Carolina, at Greenville. David C. Norton, District Judge.
(CA-04-410-6)

Submitted: January 27, 2005

Decided: February 7, 2005

Before LUTTIG and DUNCAN, Circuit Judges, and HAMILTON, Senior
Circuit Judge.

Dismissed by unpublished per curiam opinion.

William Frank Tate, Appellant Pro Se. Donald John Zelenka, Chief
Deputy Attorney General, Samuel Creighton Waters, OFFICE OF THE
ATTORNEY GENERAL OF SOUTH CAROLINA, Columbia, South Carolina, for
Appellees.

Unpublished opinions are not binding precedent in this circuit.
See Local Rule 36(c).

PER CURIAM:

William Frank Tate seeks to appeal the district court's order dismissing his petition filed under 28 U.S.C. § 2254 (2000). The district court referred this case to a magistrate judge pursuant to 28 U.S.C. § 636(b)(1)(B) (2000). The magistrate judge recommended that relief be denied and advised Tate that failure to file timely objections to this recommendation could waive appellate review of a district court order based upon the recommendation. Despite this warning, Tate failed to timely object to the magistrate judge's recommendation.

The timely filing of specific objections to a magistrate judge's recommendation is necessary to preserve appellate review of the substance of that recommendation when the parties have been warned that failure to object will waive appellate review. See Wright v. Collins, 766 F.2d 841, 845-46 (4th Cir. 1985); see also Thomas v. Arn, 474 U.S. 140 (1985). Tate has waived appellate review by failing to file timely objections after receiving proper notice. Accordingly, we deny a certificate of appealability and dismiss the appeal.

We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the court and argument would not aid the decisional process.

DISMISSED